

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL CASE NO.
AMD-04-029

WILLIE MITCHELL,
SHELTON HARRIS,
SHELLY WAYNE MARTIN,
SHAWN GARDNER,

Defendants

VOLUME XXXIV OF XXXVII
Thursday, December 4, 2008
Baltimore, Maryland

Before: Honorable Andre M. Davis, Judge
And a Jury

Appearances:

On Behalf of the Government:
Robert Harding, Esquire
On Behalf of Defendant Mitchell:
Michael E. Lawlor, Esquire
On Behalf of Defendant Harris:
Gerard P. Martin, Esquire
Paul Flannery, Esquire
On Behalf of Defendant Martin:
Thomas L. Crowe, Esquire
James G. Pyne, Esquire
On Behalf of Defendant Gardner:
Adam H. Kurland, Esquire
Barry Coburn, Esquire

Reported by:

Mary M. Zajac, RPR
Room 5515, U.S. Courthouse
101 West Lombard Street
Baltimore, Maryland 21201

1 (Proceedings at 3:55 p.m. defendants are present. Jury
2 not present.)

3 THE COURT: We'll go on record now. Just so you know
4 the note that came out this morning, quote:

5 "A juror has a personal matter to attend to this
6 evening and needs to leave by 4 p.m. Request 1 p.m. break, half
7 hour. Jury requests confirmation. Tomorrow will be the next day
8 scheduled for deliberations. Also, if verdict not reached,
9 Saturday, Sunday are free from duty, back Monday?"

10 And I sent in the normal note: Ladies and gentlemen,
11 you may, you may take an outdoors break from 1 to 1:30. No
12 deliberations are to take place during this break. Deliberations
13 may only resume after all 12 jurors have returned to the jury
14 room. Okay. Thank you.

15 MR. COBURN: Your Honor, so sorry just to take up
16 another minute of the Court's time.

17 THE COURT: Certainly. Go ahead.

18 MR. COBURN: In connection with your conversation with
19 Judge Nichols, does Your Honor remember what time I'm supposed to
20 be there? The reason I asked is because Mr. Kurland mentions to
21 me that he's gone tomorrow afternoon at 2. So I just want to
22 make sure I don't create a situation in which neither of us is
23 available.

24 (An off-record discussion.)

25 THE COURT: Ms. Arrington, may we have the jury,

1 please?

2 (Jury enters the courtroom at 3:57 p.m.)

3 THE COURT: Mr. Foreman, ladies and gentlemen of the
4 jury, good afternoon. Good to see you all again. I simply
5 brought you out to acknowledge that you wanted to leave by four
6 today, and certainly, that request is granted. I also wanted to
7 express our thanks for your continued work on this case.

8 You've indicated that you wish to come in tomorrow.
9 Normally, as you know, we don't sit on Fridays. But if that's
10 your desire, certainly, as I promised you, you are free to come
11 in tomorrow. And I will ask all of you to be back in the jury
12 room tomorrow morning no later than 9:30. Again, of course, no
13 deliberations may commence until all 12 jurors are in the jury
14 room.

15 Continue to adhere to all of my instructions. Avoid
16 media reports, if any, about the case. Do not conduct any
17 investigation. Do not discuss the case with anyone during the
18 recess. And do not discuss the case even among yourselves until
19 all 12 jurors are back in the jury room.

20 Of course, we will not be in session on Saturday and
21 Sunday. And so if your work continues into next week, of course
22 we'll adhere to the same schedule starting on Monday next week,
23 and I'll ask you to be here at 9:30 on Monday.

24 With that, enjoy your evening. You are excused until
25 9:30 tomorrow morning. Jury's excused.

1 (Jury exits the courtroom at 4:00 p.m.)

2 THE COURT: Well, I didn't see anything that caused
3 concern. They all seem to be in good spirits. Casually dressed,
4 as they should be.

5 The defendants are excused. I thank the marshals very
6 much.

7 (Defendants exit the courtroom.)

8 THE COURT: Counsel, if you'll just stick around for a
9 minute. All right.

10 I just wanted to address very, very briefly, Mr.
11 Harding and Mr. Martin, the motion which the government filed to
12 which Mr. Martin and Mr. Flannery filed a response. It seems to
13 me it's probably arguably excessive, but Mr. Harding, I think,
14 that if you will just submit your request under oath, that is,
15 provide an affidavit with the brief summary of the incident that
16 gives rise to the request, the Court, I'll give counsel for Mr.
17 Harris an opportunity to respond. But I see no difficulty in
18 granting that request.

19 But I think out of an abundance of caution, Mr. Martin
20 and Mr. Flannery make a good point, that there should be a more
21 substantial showing than simply a motion by the government.

22 MR. HARDING: That's fine, Your Honor. Do you want an
23 affidavit from me or from an agent?

24 THE COURT: From one of the marshals.

25 MR. HARDING: Okay.

1 THE COURT: From one of the marshals who were present
2 at the time. And just describe very briefly what happened,
3 literally no more than one page, what happened, and how it was
4 that bodily fluids came to be in the atmosphere.

5 MR. HARDING: Okay. I'll bring it by your chambers
6 tomorrow morning.

7 THE COURT: That's great. I was going to say, do it,
8 you don't have to file it CMF. If you'll bring a hard copy by
9 and serve a copy on Mr. Martin by fax or e-mail, that will take
10 care of it. Yes, Mr. Martin.

11 MR. MARTIN: That's fine, Your Honor. Your Honor, I
12 just wanted to inquire. It occurred to me on the train that
13 perhaps I want to make sure that there are photographs to the
14 extent there are, of the, whatever happened up there. I don't
15 want anything to get lost.

16 THE COURT: Of course. No. I think there's going to
17 be an indictment.

18 MR. MARTIN: My guess is there will be, Your Honor.

19 THE COURT: Right. Right.

20 MR. MARTIN: I just want to make sure the record is
21 preserved.

22 THE COURT: I understand that they've been able to
23 capture the video images, the video itself in the way that they
24 did.

25 MR. MARTIN: That's fine.

1 MR. HARDING: Judge, I have seen the videotape.

2 THE COURT: Okay. Great. So just have Steve Akers or
3 any of the marshals prepare a short affidavit.

4 MR. MARTIN: I assume there's no sound to any of this.

5 THE COURT: I don't think so.

6 MR. HARDING: No.

7 MR. MARTIN: Thank you, Your Honor.

8 THE COURT: Thank you all very much. Mr. Kurland.

9 MS. RHODES: Just, a brief scheduling matter. I've
10 enjoyed the hospitality of the Third Floor Library for the last
11 couple of days. I just want to make sure I'm not in violation of
12 a court order. Tomorrow, for the morning up until 2:00, if I'm
13 on 45 minute call, is that okay?

14 THE COURT: Absolutely.

15 MR. KURLAND: Because I'm going to plan on --

16 THE COURT: I'm just asking you, in fact, let's make it
17 an hour. Okay? If everybody can get here in an hour, I'll be
18 more than satisfied.

19 MR. KURLAND: That prevents an I-95 stop issue.

20 THE COURT: No. We don't want that. Thank you all
21 very much. Hope you all had a great Thanksgiving. We're in
22 recess.

23 (Conclusion of Proceedings at 4:05 p.m.)
24
25

REPORTER'S CERTIFICATE

I, Mary M. Zajac, do hereby certify that I recorded stenographically the proceedings in the matter of USA v. Willie Mitchell, et al., Case Number(s) AMD-04-029, on December 4, 2008.

I further certify that the foregoing pages constitute the official transcript of proceedings as transcribed by me to the within matter in a complete and accurate manner.

In Witness Whereof, I have hereunto affixed my signature this ____ day of _____, 2009.

Mary M. Zajac,
Official Court Reporter